IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 122 of 2002
with
CIVIL APPLICATION NO. 7007 OF 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAVAJI SHANTABEN MAHADEVPARI

Versus

RAMBHAI VALA AHER

Appearance:
1. Second Appeal No. 122 of 2002
MR RC KAKKAD for Petitioner No. 1
MR ASHUTOSH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 21/01/2003

ORAL JUDGEMENT

The respondent was the plaintiff in Civil Suit No. 83/89 in the Court of Civil Judge (J.D), Una. He

had filed the said Suit for specific performance of the agreement of sale dated 2.3.1987 for Rs. 10,000/executed by the appellant in respect of the house in question. In substance, two defences were raised before the trial Court. The first defence was that the appellant had borrowed a sum of Rs. 4,000/- from the respondent on 2.3.1987, which was to be repaid on 14.3.1989 with interest quantified as Rs. 1,920/- per year and the document was executed as security for the said loan. The other defence was that the appellant was not the only owner of the property and the Suit was bad for non-joinder of necessary parties.

2. The trial Court, at the end of the trial, negatived the defences and decreed the suit in favour of the respondent. The appellant filed appeal in the District Court, which was initially numbered as Appeal No. 58/92, but subsequently it was numbered as Regular Civil Appeal No. 70/99 in the Court of Second Extra Judge, Veraval. The learned Appellate Judge by his judgement dated 19th October, 2001 dismissed the said appeal.

3. The appellant has therefore filed this appeal challenging the judgement and decree of the Courts below.

4. In paragraph 6 of the memo of appeal, the following questions are formulated as substantial questions of law.

(1) Whether in facts and circumstances of the case the lower courts were right in passing the decree of specific performance as prayed by the plaintiff?

(2) Whether in facts and circumstances of the case the suit of the plaintiff is not failed because of non-joinder of necessary parties?

(3) Whether looking to the agreement Ex.17, looking to the notice Ex.18, looking to the deposition of the plaintiff which is at Ex. 20 and looking to the plaint Ex.1 both the lower courts are right in passing the decree though the versions and the stands are different from each other?

5. The learned Counsel for the appellant submitted that there was variance between the averments made in the notice prior to the suit and the plaint and there were also other contradictions in the evidence. He also submitted that the suit was bad for non-joinder of

necessary parties.

6. Now it appears from the judgement of the Appellate Court that the main contention advanced before the Appellate Court was that the appellant had borrowed a loan from the plaintiff, and for the security of the repayment of the said loan, the sale agreement Ex.17 was executed. The Courts below have rejected the said defence after considering the evidence on record. The trial Court also negatived the defence that the suit was bad for non-joinder of necessary parties, after holding that it was the appellant who was the owner of the property. In my opinion, the Courts below have not committed any substantial error of law in arriving at the findings which are recorded after appreciating the entire evidence on record. The questions which have been formulated in the memo of appeal are essentially questions of fact and no substantial question of law arises in the appeal. The appeal is therefore dismissed. Notice is discharged.

Interim relief which was granted in Civil Application No.7007 of 2002 is vacated. Civil application also stands disposed of.

(M.C.Patel, J.)
*/Mohandas